

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:00-00109-01

CARLOS REYES

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's "motion to compel the filing of a Rule 35 motion and preserve defendant's rights an/or pursuant to F.R.C.V.P. Rule 60(b)(1-6)". (ECF No. 101).

Under Rule 35(b), the decision to move for reduction of sentence is solely in the discretion of the Government. The district court is without authority to compel such a motion unless Defendant can show his cooperation is complete, and that the Government breached the plea agreement or the Government's failure to file resulted from an unconstitutional motive or was not rationally related to a legitimate government goal. Wade v. United States, 504 U.S. 181, 185-86 (1992); United States v. Butler, 272 F.3d 683, 686 (4th Cir. 2001). Defendant must make a "substantial threshold showing," Wade, 504 U.S. at 186, of either of these elements which should constitute more than a recitation of the assistance provided.

United States v. Brown, Criminal No. 3:09-825-CMC, 2017 WL 3621485, *1 (D.S.C. May 18, 2017); Fed. R. Crim. P. 35(b). Reyes has not shown that the government breached his plea agreement or that its failure to file a Rule 35(b) motion was based on a constitutionally impermissible motive. Therefore, defendant's motion is **DENIED** in its entirety.

The Clerk is directed to send a copy of this Order to plaintiff, counsel of record, to the United States Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

IT IS SO ORDERED this 14th day of January, 2019.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge